

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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FERNANDO HERNANDEZ, KENNETH CHOW,
BRIAN WHITE, DAVID WILLIAMS,
MARQUIS ACKLIN, CECILIA JACKSON,
TERESA JACKSON, MICHAEL LATTIMORE
and JUANY GUZMAN, Each Individually, And On Behalf Of
All Other Persons Similarly Situated,

Plaintiffs,

-against-

THE FRESH DIET INC.,
SYED HUSSAIN, Individually,
JUDAH SCHLOSS, Individually,
and ZAIMI DUCHMAN, Individually

Defendants.
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**AFFIDAVIT OF
PLAINTIFF
FERNANDO
HERNANDEZ IN
SUPPORT OF
MOTION FOR
INJUNCTIVE
RELIEF RE:
RETALIATION**

FERNANDO HERNANDEZ declares, subject to the penalties for perjury, that the following is true and correct:

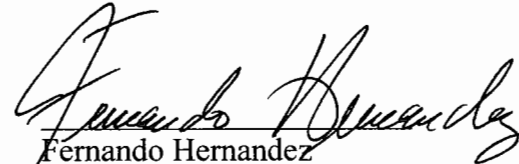
1. I submit this affidavit in support of my motion for injunctive relief against the Defendants regarding their acts of retaliation against me.
2. I am presently 41 years old.
3. I live at 225 South 3rd Street, Apartment 4, Brooklyn, NY 11211.
4. In approximately April 2010, I was looking for work and a friend told me that there might be an employment opportunity as a driver/food delivery person for a company called The Fresh Diet, Inc.
5. At that time, I went to The Fresh Diet Inc.'s facilities in Brooklyn, New York and met with delivery manager Syed Hussain, who told me that I could begin working right away as a driver/food delivery person on a full-time basis.
6. Starting in approximately April 2010, I commenced full-time employment as a driver/food delivery person for The Fresh Diet, Inc., reporting directly to delivery manager Syed Hussain.
7. At all relevant times during my employment with The Fresh Diet, Inc., I regarded Syed Hussain to be my manager and supervisor. I reported to him or his assistant each day that

I worked, and they had complete discretion regarding the work assignments (the delivery routes) that I would be given.

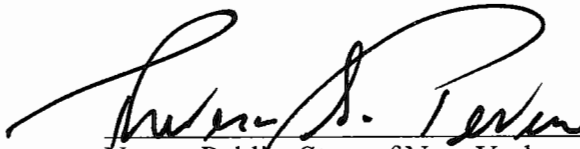
8. Each day that I reported for work, Syed Hussain or someone under his direct supervision would tell me which delivery routes I would be responsible for that day. These assignments or routes usually covered various locations throughout the tri-state New York City metropolitan area.
9. My objective in initially approaching The Fresh Diet, Inc. was to obtain and maintain full-time employment, and to earn as much money as I could, in order to support myself and my family.
10. At no point during the course of my employment did I ever advise Syed Hussain or anyone else that I desired less than full-time employment with the company.
11. When I began working for The Fresh Diet, Inc. in approximately April 2010, I was given five to six days of work per week, delivering food throughout the tri-state metropolitan area.
12. I would often work 10-14 hours per day on those days that I worked.
13. From when I began in approximately April 2010 until approximately May 21, 2010, I typically worked five to six days a week for The Fresh Diet, Inc., and typically made between \$600 and \$800 per week.
14. I needed to work full-time during this period, in order to support myself and my family, including my three minor children.
15. Throughout the entire period beginning in approximately April 2010 up to May 21, 2010, I regarded myself as a full-time employee of The Fresh Diet, Inc. If someone had asked me what my job was, or what I did for a living, I would have replied that I worked full-time for The Fresh Diet, Inc. as a driver/food delivery person.
16. Once I began working for The Fresh Diet, Inc. on a full-time basis in approximately April 2010, I did not pursue other employment opportunities, since I regarded myself as being employed full-time by The Fresh Diet, Inc.
17. I would not have been able to support myself and my family by working a part-time schedule.
18. On approximately May 21, 2012, I arrived at work to receive my assignment for the day, and was told by my manager Syed Hussain that he was going to cut my route.
19. Moments after telling me that he was going to cut my route, Syed Hussain approached me in a confrontational manner and told me that he did not want me speaking with any of the other drivers about lawyers and lawsuits. When I asked him to explain what he meant, he said, "he heard it from someplace," and told me, "just don't do it."

20. Over the next few days, Syed Hussain warned me not to speak with any of the other drivers regarding my work assignments or any other issues I had with The Fresh Diet, Inc.
21. During the same time, several other drivers approached me and told me that Syed Hussain had warned them not to speak to me about work-related issues and complaints or else they would be fired.
22. Since that incident on or about May 21, 2012, Syed Hussain has drastically cut my assignments or routes, and is now offering me work only one day a week, or in some instances, only one day every two weeks.
23. Since that incident on or about May 21, 2012, my earnings have drastically declined and in those weeks that I do not work for The Fresh Diet, Inc., the company does not pay me any money at all, and in those weeks that I do work, I now make typically less than \$200 per week.
24. I have remained available for full-time work since May 21, 2012, and desire and need to work full-time.
25. I never told Syed Hussain or anyone else that I wanted my schedule reduced or that I was no longer interested in working full-time. To the contrary, I protested the drastic reduction in my work schedule and earnings.
26. It is impossible for me to support myself and my family at my current rate of earnings of less than \$200 per week. As stated in paragraph 23, in some weeks, I have had no work or earnings at all.
27. I believe that my manager, Syed Hussain, drastically reduced my schedule from five or six days a week to a one day a week or less because he learned that I was contemplating filing a lawsuit against The Fresh Diet, Inc. and was discussing this matter with other employees.
28. In early June 2012, I, along with several other individuals, commenced this civil action against The Fresh Diet, Inc., Syed Hussain and the other Defendants by filing the complaint in court.
29. It is my understanding that the complaint was served on The Fresh Diet, Inc. and Syed Hussain shortly after being filed in court in early June 2012. Therefore, Syed Hussain is presently aware that a civil action has been brought against him and The Fresh Diet, Inc. and has been aware of this fact for the past several weeks.
30. To date, Syed Hussain continues to offer me offer only sporadic work assignments, and frequently simply ignores my attempts to communicate with him regarding potential work assignments.
31. I believe that Syed Hussain is actively retaliating against me for being a Plaintiff in this civil action.

32. I now consider myself to be unemployed, whereas prior to May 21, 2012, I considered myself to be a full-time employee of The Fresh Diet, Inc. under the supervision, direction and control of my manager, Syed Hussain.


Fernando Hernandez

Subscribed and sworn to before me
this 9th day of July 2012


Notary Public, State of New York

THERESA S. PETERS
Notary Public, State of New York
No. 03-4882379
Qualified in Bronx County
Commission Expires Jan, 5, 2015